

DEC - 9 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYBefore the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
)
Rules and Regulations Implementing the) CG Docket No. 02-278
Telephone Consumer Protection Act of 1991) CC Docket No. 92-90

COMMENTS OF BLOCKLIST.COM

Blocklist.com, by its attorney, hereby submits its comments on the *Notice* in the above-referenced proceeding.¹ For the reasons described below, Blocklist.com urges the Commission to adopt rules to permit consumers to **take** advantage of current technology to block, filter and manage faxes.

Blocklist.com operates what is tantamount to a national do-not-fax list. Through the use of technical advances made during the last ten years, Blocklist.com operates a **fax** filtering system that is free for consumers. Consumers utilize the Blocklist.com service to have broadcast faxes rerouted from their fax machines to a free web-based inbox, which avoids the costs and interruptions associated with unsolicited faxes, but without infringing on constitutional rights of free speech. Blocklist.com submits that the Commission should adopt rules creating a national do-not-fax list and adopting the Blocklist.com model to address the ongoing issues created by broadcast faxing without overstepping constitutional boundaries.

¹ Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, CG Docket No. 02-278, CC Docket No. 92-90, FCC 02-250 (rel. Sep. 18, 2002) (the "*Notice*").

I. Introduction

Blocklist.com is a not-for-profit organization, based in Canada, devoted to providing an alternative to the cost, expenses and inconveniences associated with unsolicited faxes

Blocklist.com currently has approximately two million subscribers.

Blocklist.com provides its subscribers with a free online mailbox that receives filtered faxes from participating fax broadcasters. The Blocklist.com service takes broadcast faxes that are directed to a subscriber's fax number and redirects these faxes through an interface to the subscriber's web based inbox. The redirected faxes are stored for 30 days allowing users to log in to Blocklist.com and view them at their leisure. Blocklist.com's service *does not* interfere with ordinary business faxes. All inboxes are protected by unique passwords and the Blocklist.com site has state of the art security protection.

Blocklist.com maintains numbers for 18 months and notifies consumers of a pending expiration (if they voluntarily provide an e-mail address). Revisions to the Blocklist.com database are made daily.

Blocklist.com permits broadcasters to deliver faxes to consumers who enjoy the convenience of viewing faxes online from private mailboxes or who may choose to ignore the faxes completely. According to feedback from Blocklist.com subscribers, they appreciate having one mailbox to review all of their broadcast faxes *before* deciding which faxes to save, print, or discard.³ They only wish that all fax broadcasters were required to "filter" their faxes through Blocklist.com.³ This is exactly what Blocklist.com is now proposing.

² Representative examples of feedback from Blocklist.com subscribers are attached to these comments as Exhibit I
³ 370 Blocklist.com subscribers have signed up to support this petition to require all fax broadcasters to participate in the Blocklist.com service. Many of these supporters have added comments explaining that they love the free service and only wish it applied to all broadcast faxes they received.

As mentioned above, this service is completely free to consumers. The cost of the service is paid by fax broadcasters and ultimately by the advertisers who send out the faxes. Blocklist.com charges fax broadcasters 0.5 cents per fax that is delivered to its subscribers' inboxes.

II. Issues Raised in the *Notice*

The *Notice* asks whether the Commission should: (1) refine its rules regarding unsolicited facsimile advertisements to account for technological developments in recent years; (2) adopt new rules to ensure that the telemarketing requirements protect the privacy of individuals and permit legitimate telemarketing practices; and (3) reconsider the option of establishing a national do not call list.⁴ The Commission further noted that these issues should be considered in the context of the constitutional standards applicable to government regulation of commercial speech.

Blocklist.com believes that the answer to each of these questions is yes, especially in light of the constitutional considerations of *Central Hudson*.⁵ The *Central Hudson* test has four prongs. The first prong addresses whether the speech being regulated is illegal or misleading, in which case the government may freely regulate it. The second prong examines whether the government has a substantial interest in regulating the speech. The third prong requires the government to show that the restriction directly and materially advances that interest, and the fourth prong requires the regulation to be narrowly tailored. The proposal submitted by Blocklist.com particularly addresses the third and fourth prongs of the *Central Hudson* test.

Requiring all fax broadcasters to participate in the Blocklist.com service would directly and materially advance the governments interest in regulating unsolicited facsimile advertising.

⁴ See *Notice*, ¶ 11

The government's interest in regulating this commercial speech is to prevent fax advertisers from shifting monetary costs (such as the cost of toner and paper to the fax recipients) and to prevent fax advertisers from tying up recipient's fax lines.

To be considered narrowly tailored, the government's restriction on commercial speech must reflect a "carefu[l] calculat[ion of] the costs and benefits associated with the burden on speech imposed by its prohibition." Blocklist.com's service directly advances the government's interest in preventing fax advertisers from shifting the cost of an unwanted fax to the recipients. The Blocklist.com service is completely free to consumers and they only incur the toner and paper to print faxes they choose. Indeed, recipients do not even have to spend the time to review their unsolicited faxes, if they chose not to do so. Further the burden on fax advertisers is substantially less than a complete ban. Fax advertisers still can send out their messages and permit consumers to reply.⁷

Additionally, to the extent that technological advances have not already eliminated the concern with tying up fax lines, Blocklist.com's service redirect the subject faxes from a fax machine to an inbox so that they will never tie up a recipient's fax line. The Blocklist.com service has the added convenience of eliminating disruptive fax calls during meals or late at night. Instead, recipients may review the faxes at their leisure at www.blocklist.com.⁸

Therefore, the Blocklist.com service is not only narrowly tailored to further the government's stated interests, it completely eliminates the problems that the regulation of

⁵ *Central Hudson Gas & Elec. Corp. v Public Service Comm'n of New York*, 441 U.S. 557 (1980) ("Central Hudson")

⁶ Notice, ¶ 12, quoting *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 (1993) (internal quotation marks omitted).

⁷ Although there are many complaints regarding unsolicited fax advertisements, it should be noted that the advertisements would not proliferate if recipients did not respond by purchasing the products or services being advertised.

unsolicited fax advertising is designed to address. Indeed, when finding the current regulations regarding unsolicited fax advertisements to be unconstitutional, the court in *American Blast Fax* noted that a national do-not-fax list would appear to meet the requirements of Central Hudson.⁹

111. The Need for New Rules Establishing the Blocklist.com Model for a National Do Not Fax Database

Section 227(c)(1) requires the Commission to evaluate alternative methods and procedures (including the use of electronic database or industry based do not call systems) to protect subscribers who do not wish to receive unsolicited advertisements. The Commission asked To comment on the effectiveness of private sector initiatives and on new technologies that enable customers to avoid receiving unwanted solicitations, as well as comment on the effectiveness of the current regulations as well as on any developing technologies that might warrant revisiting the rules on unsolicited faxes.” Blocklist.com’s service should be part of this analysis, as it provides a low cost solution that eliminates virtually all of the problems associated with unsolicited fax advertisements with no cost to consumers and little cost to fax broadcasters

Blocklist.com’s approach is a private sector initiative perfectly suited to protecting the interests of both consumers and fax broadcasters. Moreover, it takes advantage of technological developments, including the widespread availability of e-mail, the Internet and web browsers, to provide consumers with control over the faxes they receive at no cost. Further, Blocklist.com’s security procedures ensure privacy. Accuracy also is ensured because the consumers themselves provide the information used to generate the lists and because Blocklist.com actively seeks updates from consumers when they provide e-mail addresses.

⁸ In the event that a consumer does not have access to the Internet or otherwise simply does not want to receive the unsolicited faxes at all, they simply will not access the faxes and they will be deleted.

⁹ *State of Missouri ex rel. Nixon v. American Blast Fax*, 196 F.Supp.2d 920 (E.D. Mo. 2002) appeal pending Nos. 02-2705 & 02-2707 (8th Cir.).

¹⁰ Notice, ¶¶ 17, 21, 49, 50.

Moreover, Blocklist.com's experience demonstrates that current technology permits the efficient operation of a consolidated, national do-not-fax database and filtering system, at low cost to fax broadcasters. As the subscriber testimonials in Exhibit 1 demonstrate, consumers are extremely satisfied with Blocklist.com's filtering and reviewing options and, particularly, with the opportunity to manage their commercial fax traffic. By contrast company-specific do not call lists are not effective, as evidenced by the testimony of Blocklist.com's subscribers, by the limitations described in the *Notice* and by the Commission's own statistics on complaints."

Finally, and as the *Notice* explains, the Commission must consider twelve criteria when determining whether to adopt a national do-not-call list.¹² Those same criteria can and should be applied to consideration of national regulations for fax broadcasters. The Blocklist.com model would allow the Commission to satisfy all of these requirements."

¹¹ See Exhibit 1; *Notice*, ¶¶ 14, 15.

¹² *Id.*, ¶ 53.

¹³ A detailed discussion of how Blocklist.com would address each of the criteria in Section 227(c)(3) is attached to these comments as Exhibit 2.

IV. Conclusion

For all these reasons, Blocklist.com requests that the Commission adopt rules in this proceeding that are consistent with the proposals in these comments

Respectfully submitted,

BLOCKLIST.COM

By: 
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December 9, 2002

EXHIBIT 1

Correspondence from Blocklist.com Subscribers

blacklist.com

Name: Leonard B. Zaslow

City: Westport

State: CT

Phone: 1-203-227-1346

Email: lbzaslow@optonline.net

Comments: I receive several unwanted faxes every week that are the equivalent of junk mail. These are a nuisance because they take my time unnecessarily and impose on me the cost of the fax paper.

I am delighted that blacklist.com has offered me the opportunity to have unwanted faxes direct from my fax machine to their web site, where I can review them.

Name: Twila Taylor

City: Bellevue

State: Washington

Phone: 1-425-562-7997

Email: ttaylor@zandl.com

Comments: I love Blocklist.com! I wish EVERY unsolicited fax that was sent was forced to go through this same kind of filtering service. All those unsolicited faxes waste toner, paper, and my time, not to mention tying up my fax machine.

Name: Candis Hughes

City: Lethbridge

State: AB

Phone: 1-

Email: candis10@hotmail0.com

Comments: Blocklist has reduced the amount of junk faxes significantly.

Name: Sherrie Duncan

City: Orangeburg

State: New York

Phone: 1-

Email: sduncan@visionsciences.com

Comments: I think this is a wonderful service. In the course of a week we receive many unwanted faxes from companies that we have absolutely no interest in doing business with.

Although many times the number they provide to get the company removed from their lists actually work, there are many that you call and just get a busy signal and then you waste time attempting to reach a company that you don't want contact with in the first place.

blocklist.com

Name: Kathy Whalen

City: Merriam

State: KS

Phone: 1-913-362-6667

Email: kamawha@hotmail.com

Comments: I love the Blocklist.com! It greatly irritates me that I buy paper and toner for my customers to use and sometimes at the end of a week an entire ream of paper and an entire film cartridge is used up by broadcast faxes that have absolutely no bearing on my business. Thank you for this service

Name: Bill Cuthbertson

City: Plantation

State: Florida

Phone: 1-954 382-5540

Email:

Comments: I do hope the FCC takes a long hard look at this free service. It is costing hundreds of dollars annually for me and my business in these unsolicited broadcast faxes. The paper, toner, cartridge and time loss are significant to any business, not to mention tying up my fax lines from my customers. These faxes have rendered one of the most time effective machines in my office to one of the most inefficient. Please put a stop to this NOW!

Name: Rebecca Anderson

City: Aurora

State: CO

Phone: 1-

Email: beckya@qadas.com

Comments: Blacklist has reduced the number of "junk" faxes we receive significantly. Unfortunately there are still many companies who insist on faxing to us despite repeated calls to them asking for removal from their list. Thanks for your service. I wish it were mandatory for everyone sending out broadcast faxes to belong to your organization.

Name: Jeff Ehrmann

City: Lansdale

State: PA

Phone: 1-215-699-5950

Email: jehrmann@hettingerinc.com

Comments: I am happy to support Blocklist.com. I think it is a great service, and helps reduce the amount of unsolicited faxing and email that is used by Spam Advertisers. We are happy to have the service and it has reduced the amount of "spam" - faxing especially, that we receive!

blocklist.com

Name: Larr J Doze

City: Austin

State: TX

Phone: 1-

Email: ldoze@austin.rr.com

Comments: This service is great! Present the use of any paper, ink, electric and time that unwanted faxes cause. You have my full support!

Name: Sr. Connie Bielecki

City: Crestone

State: CO

Phone: 1-

Email: nada@fone.net

Comments: We are delighted that there is a possibility of, if not eliminating, at least reducing unwanted faxes! So bravo and thank you for your efforts!

Name: Claryce B. Johnson

City: Minneapolis

State: Minnesota

Phone: 1-

Email:

Comments: I support your work to get unwanted faxes blocked from my phone. It is an invasion of my privacy. They use my resources without my permission, eg., phone time, fax paper and ink. Even though there is usually a phone number that I can call to get my number removed from their list, it seems to only cover that particular fax and not a general list. I call each time and STILL receive unwanted faxes.

Please place my number on your Blocklist.

Name: Karen Loukides

City: Mission Viejo

State: CA

Phone: 1-

Email:

Comments: Prior to this fax filtering program I would receive several erroneous and definitely unwanted faxes from companies I didn't recall doing business with. This is an infringement of my privacy. I want to come home and leave all "commercialism" outside the door. I don't want my home "sanctuary" invaded with "garbage mail". Someone should pass legislation on this ever increasing problem! Hooray for Blocklist.com!!!!

EXHIBIT 2

Application of Section 227(c)(3) Criteria to Blocklist.com

Application of Section 227(c)(3) Criteria to Blocklist.com

Section 227(c)(3) requires the Commission to consider twelve criteria in determining whether to adopt a national database requirement. The following describes each of these criteria and how Blocklist.com would address them.

1. *Specifying a method by **which** to select an entity to administer the database.*

Blocklist.com proposes that the FCC sends out a request for proposal that will focus on companies that have actual experience running a national database, such as Blocklist.com.

2. *Requiring each common carrier providing telephone exchange service to inform subscribers of the opportunity to object to receiving telephone solicitations.*

Blocklist.com will aid in the effort to notify consumers of the availability of its service by requiring participating broadcasters to include a footer on broadcast faxes that inform consumers of how to sign up for the free Blocklist.com service.

3. *Specifying the methods by which subscribers may be informed, by the common carrier that provides services to the subscriber, of the subscriber's right to give or revoke a notification of an objection to receiving telephone solicitations.*

See response to paragraph 2 above

4. *Specifying the methods by which such objections shall be collected and added to the database.*

Blocklist.com collects objections in two ways. **Fax** numbers may be added by visiting the blocklist.com web site or by calling a toll free number that is included on all broadcast faxes transmitted by participating fax broadcasters. The database is updated daily and changes are transmitted to broadcasters automatically every evening.

5. *Prohibiting any residential subscriber from being charged for giving or revoking such notification or being included in the database.*

The Blocklist.com service is completely free to fax recipients; only the fax broadcasters are charged. It is anticipated that these charges will be passed on to the advertisers.

6. *Prohibiting any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in the database.*

In the context of the do-not-fax list, all fax broadcasters will be required to "filter" their broadcast jobs against the Blocklist.com database.

7. *Specifying the method by which any person desiring to make **or** transmit telephone solicitations **will** obtain access to the database and costs to be recovered from such persons.*

The database will be available through a web-based interface. The only direct cost will be the 0.5 cents per page charged to deliver faxes to the recipient's Blocklist.com password protected inbox. This fee covers the cost of maintaining the database (including daily updates), delivering the faxes, and creating the necessary interface with the broadcasters. Updates to the database are transmitted to broadcasters from Blocklist.com's web site on a daily basis.

8. *Specifying the methods for recovering from persons accessing the database, the cost involved in operating the database.*

See response to paragraph number 7 above.

9. *Specifying the frequency with which the database will be updated and the method by which such updates will take effect.*

The database will be updated daily. Updates to the database are transmitted to broadcasters from Blocklist.com's web site on a daily basis.

10. *Designing the database to enable states to use it to administer **or** enforce state law.*

Numbers from state do-not-fax databases may be added to the Blocklist.com national do-not-fax list. Records from Blocklist.com will be made available to state officials, upon written request.

11. *Prohibiting the use of the database for any purpose other than compliance with the requirements of section 227 and any such state law, and specifying methods for protection of the privacy rights of persons whose numbers are included in the database.*

Blocklist.com is prepared to enter into a contract with the FCC regarding these privacy provisions, which are consistent with its own stated privacy policy. See www.blocklist.com.

12. *Requiring each common carrier providing services to any person for making telephone solicitations to notify such persons of the requirements of this section and the regulations there under.*

Blocklist.com supports this notification provision.

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 9th day of December, 2002. copies of the foregoing "Comments of Blocklist.com" were served on the following:

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